

TITLE 327 WATER POLLUTION CONTROL BOARD

Proposed Rule as Preliminarily Adopted

LSA Document #00-136

DIGEST

Adds a new rule concerning public notification by National Pollutant Discharge Elimination System (NPDES) permit holders of the potential health impact of combined sewer overflows (CSOs) and amends 327 IAC 5-2-9. Effective 30 days after filing with the secretary of state.

HISTORY

First Notice of Comment Period: #00-136(WPCB) July 1, 2000, Indiana Register (23 IR 2613).

Second Notice of Comment Period and Notice of First Hearing: February 1, 2002, Indiana Register (25 IR 1736).

Date of First Hearing: April 10, 2002.

Third Notice of Comment Period and Notice of Second Hearing: November 1, 2002, Indiana Register (26 IR 422).

327 IAC 5-2-9

327 IAC 5-2.1

SECTION 1. 327 IAC 5-2-9 IS AMENDED TO READ AS FOLLOWS:

327 IAC 5-2-9 Notification requirements for toxic pollutants

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-2; IC 13-18-4

Affected: IC 13-15-1-2; IC 13-18-3

Sec. 9. In addition to the reporting requirements of ~~327 IAC 5-2-8(j)~~, **section 8(10) of this rule**, permits issued to ~~all~~ **any** manufacturing, commercial, mining, ~~and or~~ silvicultural ~~dischargers~~ **discharger** shall contain conditions requiring ~~such dischargers~~ **the discharger** to notify the commissioner as soon as ~~they know~~ **the discharger knows** or ~~have~~ **has** reason to ~~believe know the following:~~

(a) (1) That any activity has occurred or will occur ~~which that~~ would result in the discharge of any toxic pollutant ~~which that~~ is not limited in the permit if that discharge will exceed the highest of the following notification levels:

(1) (A) One hundred (**100**) micrograms per liter. (~~100 µg/l~~);

(2) (B) Two hundred (**200**) micrograms per liter (~~200 µg/l~~) for acrolein and acrylonitrile; five hundred (**500**) micrograms per liter (~~500 µg/l~~) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one (**1**) milligram per liter (~~1 mg/l~~) for antimony.

(3) (C) Five (5) times the maximum concentration value reported for that pollutant in the permit application in accordance with 40 CFR 122.21(g)(7). ~~or~~

(4) (D) A notification level established by the commissioner on a case-by-case basis, either at ~~his~~ **the commissioner's** own initiative or upon a petition by the

permittee. This notification level may exceed the levels specified in ~~subdivisions (1), (2), or (3)~~ **clause (A), (B), or (C)** but may not exceed the level which can be achieved by the technology-based treatment requirements applicable to the permittee under the CWA (see 327 IAC 5-5-2).

~~(b) (2) That they have~~ **the discharger has** begun or ~~expect~~ **expects** to begin to use or manufacture, as an intermediate or final product or byproduct, any toxic pollutant ~~which that~~ **that** was not reported in the permit application under 40 CFR 122.21(g)(9). However, this ~~subsection~~ **subdivision** does not apply to the permittee's use or manufacture of a toxic pollutant solely under research or laboratory conditions.

(Water Pollution Control Board; 327 IAC 5-2-9; filed Sep 24, 1987, 3:00 p.m.: 11 IR 622)

SECTION 2. 327 IAC 5-2.1 IS ADDED TO READ AS FOLLOWS:

Rule 2.1. Combined Sewer Overflow Public Notification

327 IAC 5-2.1-1 Purpose

Authority: IC 13-14-1-5; IC 13-14-8; IC 13-14-9; IC 13-18-4-1

Affected: IC 13-18-3

Sec. 1. The purpose of this rule concerning community notification of potential health impacts resulting from a combined sewer overflow discharge is to promote and accomplish the following:

(1) Educate the public, in general, and those persons who, specifically, may come into contact with water that may be affected by a combined sewer overflow discharge as to the health implications possible from combined sewer overflow discharge tainted water.

(2) Alert persons who most likely would be immediately affected by a combined sewer overflow discharge or the potential for a combined sewer overflow discharge to occur.

(3) Protect persons from possible exposure to waterborne pathogens resulting from contact with or ingestion of water from a waterway that may be affected by a combined sewer overflow discharge.

(4) Complement the combined sewer overflow discharge requirements contained in a National Pollutant Discharge Elimination System (NPDES) permit but not obviate or supersede any more stringent requirements contained in an NPDES permit.

(Water Pollution Control Board; 327 IAC 5-2.1-1)

327 IAC 5-2.1-2 Applicability

Authority: IC 13-14-1-5; IC 13-14-8; IC 13-14-9; IC 13-18-4-1

Affected: IC 13-18-3

Sec. 2. Any person required to possess a National Pollutant Discharge Elimination System (NPDES) permit and having one (1) or more combined sewer overflow outfalls into waters of the state must comply with this rule. *(Water Pollution Control Board; 327 IAC 5-2.1-2)*

327 IAC 5-2.1-3 Definitions

Authority: IC 13-14-1-5; IC 13-14-8; IC 13-14-9; IC 13-18-4-1
Affected: IC 13-11-2-158; IC 13-11-2-265; IC 13-18-3

Sec. 3. The following definitions apply throughout this rule:

(1) “Affected persons” means those persons who most likely would be exposed to waterborne pathogens through direct contact with or ingestion of water affected by a combined sewer overflow discharge and includes:

- (A) residents adjacent to a combined sewer overflow outfall;
- (B) residents downstream of a combined sewer overflow outfall on affected waters; and
- (C) owners or operators of facilities that provide access to or recreational opportunities in or on a waterbody affected by a combined sewer overflow discharge.

(2) “Affected waters” means those waters where the E. coli criteria may be exceeded due to a combined sewer overflow discharge.

(3) “Combined sewage” means a combination of wastewater, including domestic, commercial, or industrial wastewater and storm water transported in a combined sewer.

(4) “Combined sewer overflow community” or “CSO community” means a recipient of a National Pollutant Discharge Elimination System (NPDES) permit that includes one (1) or more combined sewer overflow outfalls.

(5) “Combined sewer overflow discharge” or “CSO discharge” means the discharge of combined sewage from an overflow point listed in an NPDES permit.

(6) “Combined sewer overflow outfall” or “CSO outfall” means a structure that:

- (A) conveys combined sewage into a receiving waterbody; and
- (B) is listed in an NPDES permit.

(7) “Combined sewer system” means a system that:

- (A) is designed, constructed, and used to receive and transport combined sewage to a publicly owned wastewater treatment plant; and
- (B) may contain one (1) or more combined sewer overflow outfalls that discharge sewage when the hydraulic capacity of the wastewater treatment plant, combined sewer system, or part of the system is exceeded as a result of a wet weather event.

(8) “Commissioner” means the commissioner of the department of environmental management.

(9) “Department” means the department of environmental management except as specifically referenced in this rule.

(10) “Person” has the meaning set forth at IC 13-11-2-158.

(11) “Waters of the state” has the meaning set forth for “waters” at IC 13-11-2-265.

(Water Pollution Control Board; 327 IAC 5-2.1-3)

327 IAC 5-2.1-4 CSO notification procedure

Authority: IC 13-14-1-5; IC 13-14-8; IC 13-14-9; IC 13-18-4-1
Affected: IC 13-18-3

Sec. 4. (a) A CSO community shall develop a CSO notification procedure that meets the requirements of this rule.

- (b) A CSO notification procedure must include the following information:
- (1) Locations of the CSO outfalls, public access points, and recreational facilities located on affected waters.
 - (2) Method, according to section 6 of this rule, that shall be used to provide notification to affected persons within the area of each affected water.
 - (3) Assignment of responsibilities within a CSO community for implementing the CSO notification procedure.

(c) A CSO notification procedure must meet the following:

- (1) Be recorded on a form that is:
 - (A) designed by the commissioner; and
 - (B) made available from the commissioner within one (1) month after the effective date of this rule.
- (2) Be submitted to the commissioner for approval before the latter of the following:
 - (A) Four (4) months after the effective date of this rule.
 - (B) Four (4) months after the form is available from the commissioner.
- (3) Be included in the community's CSO operational plan.
- (4) Immediately be implemented by the CSO community following submission according to subdivision (2)(A) or (2)(B).
- (5) Be modified as necessary in accordance with comments received from the commissioner.

(Water Pollution Control Board; 327 IAC 5-2.1-4)

327 IAC 5-2.1-5 Notification

Authority: IC 13-14-1-5; IC 13-14-8; IC 13-14-9; IC 13-18-4-1

Affected: IC 13-18-3

Sec. 5. (a) A CSO community shall provide notification to:

- (1) affected persons;
- (2) persons who request to be notified; and
- (3) local health departments and drinking water suppliers located within ten (10) river miles downstream of each CSO outfall experiencing or about to experience a CSO discharge.

(b) The notification must be appropriately worded to explain the nature of the potential health effects of a CSO discharge and steps that affected persons can take to avoid exposure.

(c) Unless specifically required in this rule, a CSO community is not responsible for confirming that the intended recipients of the notification required by subsection (a) received the notification.

(d) Notification must be provided whenever information from a reliable source indicates one (1) of the following:

- (1) A discharge or discharges from one (1) or more combined sewer overflow outfalls is occurring.
- (2) A reasonable likelihood exists that a discharge or discharges from one (1) or

more combined sewer overflow outfalls will occur within the next twenty-four (24) hours.

(e) If a combined sewer overflow discharge occurs within the general time period predicted by a notification, then no additional notification is required to state that the discharge is occurring or has occurred.

(f) If a CSO discharge occurred and notification was not provided according to subsection (d), the CSO community shall report this fact on the monthly report required according to section 7(a) of this rule. (*Water Pollution Control Board; 327 IAC 5-2.1-5*)

327 IAC 5-2.1-6 Community notification methods

Authority: IC 13-14-1-5; IC 13-14-8; IC 13-14-9; IC 13-18-4-1

Affected: IC 13-18-3

Sec. 6. (a) A CSO community shall do the following:

(1) Send an invitation in March of each year to allow the following persons to request receipt of CSO notification:

(A) Media sources, such as newspapers, television, or radio.

(B) Affected persons.

(2) Provide notification to persons who accept the notification invitation according to clause (A):

(A) when a CSO discharge is occurring or is reasonably likely to occur within twenty-four (24) hours; and

(B) in a manner that is mutually agreeable to the recipient and the CSO community. If the recipient and CSO community do not reach agreement on an acceptable manner of notification, then the CSO community shall provide notice by telephone or facsimile.

(b) In addition to the requirements of subsection (a), a CSO community shall post a prominent sign:

(1) at access points to the water, including boat ramps, bridges, parks, and school yards;

(2) along linear public areas, such as parkways and greenways, adjacent to affected waters at intervals frequent enough to provide notification to persons who may come into direct contact with the water; and

(3) with the following wording printed in English and any other language common in the locale (including the language necessary to fill in the blanks):

“Caution–Sewage pollution. Sewage may be in this water during and for several days after periods of rainfall or snow melt. People who swim in, wade in, or ingest this water may get sick. For more information, please call [insert local sewer authority, telephone number, and, if available, a Web site address].”.

(c) If an access point to an affected water is located on private property, then a CSO community shall:

(1) annually offer to post the sign required under subsection (b) for the owner or operator of the private property;

(2) submit documentation to the department each March that the property owner or operator has refused to allow the CSO community to post the sign on the owner's property; and

(3) not be required to post the sign required under subsection (b) provided the private property owner or operator has refused the community's offer made according to subdivision (1).

(d) A CSO community may submit a request for the commissioner's approval to establish alternative notification methods specific to the CSO community's needs for providing notification to affected persons if the CSO community can demonstrate to the department that such alternative notification methods are more effective at providing actual notice. (*Water Pollution Control Board; 327 IAC 5-2.1-6*)

327 IAC 5-2.1-7 Record keeping and reporting

Authority: IC 13-14-1-5; IC 13-14-8; IC 13-14-9; IC 13-18-4-1

Affected: IC 13-18-3

Sec. 7. (a) A CSO community shall document its public notification efforts on its monthly CSO discharge monitoring report (DMR).

(b) A CSO community shall maintain a record of reports submitted according to subsection (a) that is:

(1) kept at the wastewater treatment plant; and

(2) available to the commissioner's representatives during the department's normal working hours.

(Water Pollution Control Board; 327 IAC 5-2.1-7)